



DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 300

[Docket No. 210322-0062]

RIN 0648-BJ26

International Fisheries; Pacific Tuna Fisheries; 2021 Commercial Fishing

Restrictions for Pacific Bluefin Tuna in the Eastern Pacific Ocean

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS is issuing regulations under the Tuna Conventions Act of 1950, as amended (TCA), to implement Inter-American Tropical Tuna Commission (IATTC) Resolution C-20-02 (“Measures for the Conservation and Management of Bluefin Tuna in the Eastern Pacific Ocean, 2021”). This rule implements annual limits on commercial catch of Pacific bluefin tuna (*Thunnus orientalis*) in the eastern Pacific Ocean (EPO) for 2021. This action is necessary to conserve Pacific bluefin tuna and for the United States to satisfy its obligations as a member of the IATTC.

DATES: The final rule is effective [*Insert date 7 days after date of publication in the FEDERAL REGISTER*].

ADDRESSES: Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this rule may be submitted to www.reginfo.gov/public/do/PRAMain. Find this particular information collection by using the search function and entering either the title of the collection or the OMB Control Number 0648-0778.

Copies of the draft Regulatory Impact Review (RIR) and other supporting documents are available via the Federal eRulemaking Portal: <http://www.regulations.gov>, docket NOAA-NMFS-2020-0163 or contact the Highly Migratory Species Branch Chief, Lyle Enriquez, 501 W. Ocean Blvd., Suite 4200, Long Beach, CA 90802, or WCR.HMS@noaa.gov.

FOR FURTHER INFORMATION CONTACT: Celia Barroso, NMFS, 562-432-1850, Celia.Barroso@noaa.gov.

SUPPLEMENTARY INFORMATION:

Background

On January 5, 2021, NMFS published a proposed rule in the **Federal Register** to revise regulations at 50 CFR part 300, subpart C, for the commercial catch of Pacific bluefin tuna applicable to U.S. commercial fishing vessels in the IATTC Convention Area (Convention Area)¹ in 2021 (86 FR 279). The comment period was open for 30 days. NMFS received one public comment on the proposed rule, which is addressed later in this preamble.

This final rule is implemented under the authority of the TCA (16 U.S.C. 951 *et seq.*), which directs the Secretary of Commerce, after approval by the Secretary of State, to promulgate regulations as necessary to implement resolutions adopted by the IATTC. The Secretary of Commerce has delegated this authority to NMFS.

Additional background information on the IATTC, the international obligations of the United States as a member of the IATTC, and the need for regulations to manage the Pacific Bluefin tuna stock was included in the proposed rule and is not repeated in this rule.

New Regulations for Commercial Pacific Bluefin Tuna for 2021

¹ The Convention Area is defined as waters of the EPO within the area bounded by the west coast of the Americas and by 50° N. latitude, 150° W. longitude, and 50° S. latitude.

This final rule establishes catch and trip limits for U.S. commercial fishing vessels that catch Pacific bluefin tuna in the Convention Area and a landing receipt submission deadline for buyers of Pacific bluefin tuna during 2021. This final rule also implements procedures for notice of inseason actions to reduce trip limits or close the fishery. This final rule does not extend to 2021 the pre-trip notification requirement that was in effect for 2019-2020.

Annual Catch and Trip Limits

In 2021, the catch limit for the entire U.S. fleet is 425 metric tons (mt). The initial trip limit for 2021 is 20 mt. If cumulative catch reaches certain amounts depending on the quarter of the year, NMFS will impose an intermediate 15 mt trip limit, and a lower 2 mt trip limit through the end of the year, or until the annual catch limit is met and the fishery is closed, as follows:

- January – March: If cumulative catch reaches 250 mt, then the trip limit is reduced to 15 mt; and if cumulative catch reaches 325 mt, then the trip limit is reduced to 2 mt for the remainder of the year or until the annual catch limit is met and the fishery is closed.
- April – June: If cumulative catch reaches 275 mt, then the trip limit is reduced to 15 mt; and if cumulative catch reaches 350 mt, then the trip limit is reduced to 2 mt for the remainder of the year or until the annual catch limit is met and the fishery is closed.
- July – September: If cumulative catch reaches 300 mt, then the trip limit is reduced to 15 mt; and if cumulative catch reaches 375 mt, then the trip limit is reduced 2 mt for the remainder of the year or until the annual catch limit is met and the fishery is closed.
- October – December: If cumulative catch reaches 325 mt, then the trip limit is reduced to 15 mt; and if cumulative catch reaches 375 mt, then the trip limit is

reduced to 2 mt for the remainder of the year or until the annual catch limit is met and the fishery is closed.

Landing Receipt Submission Deadline

Under California law and regulations, electronic landing receipts (*i.e.*, e-tickets) are required for landings in California and are required to be submitted to the California Department of Fish and Wildlife within 3 business days (see California Fish and Game Code section 8046 and 14 California Code of Regulations section 197). Under this final rule, e-tickets are required to be submitted within 24 hours if any Pacific bluefin tuna is included in a landing into California. This accelerated submission deadline is required in order to better monitor catch limits.

NMFS will estimate when the overall catch is expected to reach the thresholds to reduce the trip limit (*i.e.*, from 20 mt to 15 mt, or from 15 mt to 2 mt) or the annual limit based on available fishery information, such as landing receipts. NMFS will then make decisions on inseason actions based on those estimates. NMFS encourages owners or operators of purse seine vessels to call NMFS at 562-432-1850 in advance of landing with an estimate of how much Pacific bluefin tuna was caught on the trip.

Inseason Action Announcements

Inseason actions to reduce trip limits will be imposed by NMFS, effective upon the time and date that appears in a notice on the NMFS website (<https://www.fisheries.noaa.gov/west-coast/sustainable-fisheries/pacific-bluefin-tuna-commercial-harvest-status>). Inseason actions will also be announced over a United States Coast Guard (USCG) Notice to Mariners broadcast three times per day for 4 days on USCG channel 16 VHF. NMFS will then publish a notice of the reduced trip limit in the **Federal Register** as soon as practicable.

In 2021, if NMFS determines that cumulative catch is expected to be 250 mt during January-March, 275 mt during April-June, 300 mt during July-September, or

325mt during October-December (based on landing receipts or other available information), a 15-mt trip limit will be imposed by NMFS using the inseason action procedures described in the previous paragraph.

In 2021, if NMFS determines that cumulative catch is expected to be 325 mt during January-March, 350 mt during April-June, or 375 mt during July-December, a 2-mt trip limit will be imposed by NMFS using the inseason action procedures described previously.

When NMFS determines that the 2021 catch limit is expected to be reached (based on landings receipts or other available fishery information), NMFS will prohibit U.S. commercial fishing vessels from targeting, retaining, transshipping, or landing Pacific bluefin tuna captured in the Convention Area for the remainder of the calendar year (*i.e.*, fishery closure). NMFS will provide a notice on the NMFS website and the USCG will provide a Notice to Mariners three times per day for 4 days on USCG channel 16 VHF announcing that targeting, retaining, transshipping, or landing of Pacific bluefin tuna captured in the Convention Area will be prohibited on a specified effective time and date through the end of that calendar year. Upon that effective date, a commercial fishing vessel of the United States may not be used to target, retain on board, transship, or land Pacific bluefin tuna captured in the Convention Area. However, any Pacific bluefin tuna already on board a fishing vessel on the effective date could be retained on board, transshipped, and/or landed within 14 days of the effective date, to the extent authorized by applicable laws and regulations. NMFS will then publish a notice of the fishery closure in the **Federal Register** as soon as practicable. In the event the trip limit was reduced early or the fishery was closed due to an overestimation of catch, NMFS could reverse immediately the prior inseason action to increase the trip limit or re-open the fishery after landing receipts have been received and the landed catch quantity confirmed.

NMFS will announce these actions on the NMFS website and by USCG Notice to Mariners on USCG channel 16 VHF.

Catch Reporting

NMFS will provide updates on Pacific bluefin tuna catches in the Convention Area to the public via the NMFS website: <https://www.fisheries.noaa.gov/west-coast/sustainable-fisheries/pacific-bluefin-tuna-commercial-harvest-status>. NMFS will update the NMFS website provided the updates do not disclose confidential information (in accordance with Magnuson-Stevens Fishery Conservation and Management Act section 402(b), 16 U.S.C. 1881a(b)). These updates are intended to help participants in the U.S. commercial fishery plan for reduced trip limits and attainment of the annual limits.

Public Comment and Response

NMFS received one comment on the proposed rule. The commenter urged NMFS to consider including a pre-trip notification that was part of the 2019-2020 Pacific bluefin tuna regulations in the final rule for 2021. The commenter cited events in 2017 during which the United States exceeded its commercial Pacific bluefin tuna catch limit to argue that the management scheme proposed, without the pre-trip notification, could lead the United States to exceed its limits again. NMFS notes that the Pacific Fishery Management Council (Council), the Council's advisory bodies, and NMFS considered the events in 2017, as well as 2019-2020 management approach with the pre-trip notification. As indicated by the Council's highly migratory species advisory bodies at the November 2020 Council meeting, the pre-trip notification did not provide an accurate estimate of catch on which to base inseason action. The pre-trip notification was also considered burdensome by the fleet. As noted in the proposed rule, the pre-trip notification and associated assumptions led NMFS to take inseason action too early in 2019, requiring a reversal. Additionally, there are a few notable differences between the

management scheme implemented in this final rule and the management scheme in place in 2017. First, e-tickets are required within 24 hours of a Pacific bluefin tuna landing (this requirement was first implemented in 2019). Second, procedures are in place to announce inseason actions on the NMFS website, which allows for quicker implementation of the inseason action (this requirement was also first implemented in 2019). And third, the initial trip limit of 20 mt is lower than the 25-mt trip limit in 2017. NMFS is confident that the adaptive management measures implemented in this final rule will allow for operational flexibility while maintaining catches within limits, without the pre-trip notification.

Classification

The NMFS Assistant Administrator has determined that this rule is consistent with the Tuna Conventions Act and other applicable laws.

This rule has been determined to be not significant for purposes of Executive Order 12866.

Good Cause to Shorten Delay in Effective Date

Under section 553(d) of the Administrative Procedure Act, an agency must delay the effective date of regulations for 30 days after publication, unless the agency finds good cause to make the regulations effective sooner. The NOAA Assistant Administrator for Fisheries has determined that good cause exists to make this rule effective 7 days after publication.

A stock assessment completed in July 2020 by the International Scientific Committee for Tuna and Tuna-like Species in the North Pacific Ocean showed that Pacific bluefin tuna is overfished and subject to overfishing when compared to commonly used reference points; NMFS subsequently concurred with the assessment (86 FR 9910, February 17, 2021). The main objective of IATTC Resolution C-20-02 is to reduce overfishing and aid in rebuilding of the stock by setting limits on catch in the Convention

Area during 2021. As a member of the IATTC, the United States is legally bound to implement that Resolution.

In recent years, Pacific bluefin tuna have remained in significant numbers in waters off of southern California, and U.S. commercial vessels currently have a greater opportunity to fish for Pacific bluefin tuna off of the U.S West Coast than in previous years. If the trip limits implemented by this rule were subject to the 30-day delay in effectiveness, and taking into account that a single trip could catch up to 75 mt (nearly four times the initial 20-mt trip limit), there is potential for a derby-style fishery that would result in exceeding the 425-mt catch limit for 2021 before this rule goes into effect. Delaying the effective date of this rule for a full 30 days after publication would therefore be contrary to the public's interest in ensuring conservation of Pacific bluefin tuna stock in the EPO. Such a delay would also be contrary to the public's interest in ensuring the United States is in compliance with its international obligations to implement the catch limits in IATTC Resolution C-20-02.

Although justification exists to make the rule effective immediately upon publication, NMFS is implementing a 7-day delay in effectiveness to provide sufficient time for currently-operating vessels to comply with the new regulations. Seven days is sufficient because vessels that target Pacific bluefin tuna in large quantities (*i.e.*, purse seine vessels) typically complete their fishing trips within 1 to 2 days. Therefore, to conserve Pacific bluefin tuna, which are overfished, and to remain in compliance with IATTC Resolution C-20-02, NMFS has determined that making these measures effective 7 days after publication in the **Federal Register** is in the public's interest. As soon as the rule is published, additional notice will be given to fishery participants through an e-mail sent to the IATTC distribution list.

Regulatory Flexibility Act

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration during the proposed rule stage that, for purposes of the Regulatory Flexibility Act, this action would not have a significant economic impact on a substantial number of small entities. The factual basis for the certification was published in the proposed rule and is not repeated here. No information received during the public comment period changes the action from the proposed rule or NMFS' analysis. Therefore, the initial certification published with the proposed rule—that this rule is not expected to have a significant economic impact on a substantial number of small entities—remains unchanged. As a result, a regulatory flexibility analysis was not required and none was prepared.

Paperwork Reduction Act

This rule contains revisions to a collection-of-information requirement subject to review and approval by OMB under the Paperwork Reduction Act (PRA). These revisions have been submitted to OMB for approval. This rule revises the existing requirements for the collection of information 0648-0778 by removing the pre-trip notification requirement. This reduces the number of respondents and anticipated number of responses, reducing the burden by an estimated 4.55 hours. Public reporting burden for e-ticket submission is estimated to average 0 hours because the submission will already be required by the California Code of Regulations. The voluntary pre-landing notification is estimated to average 2.55 hours, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

We invite the general public and other Federal agencies to comment on proposed and continuing information collections, which helps us assess the impact of our information collection requirements and minimize the public's reporting burden. Written comments and recommendations for this information collection should be submitted at

the following website www.reginfo.gov/public/do/PRAMain. Find this particular information collection by using the search function and entering either the title of the collection or the Office of Management and Budget (OMB) Control Number 0648-0778.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

List of Subjects in 50 CFR Part 300

Administrative practice and procedure, Fish, Fisheries, Fishing, Marine resources, Reporting and recordkeeping requirements, Treaties.

Dated: March 23, 2021.

Samuel D. Rauch, III

Deputy Assistant Administrator for Regulatory Programs,
National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 300 is amended as follows:

PART 300—INTERNATIONAL FISHERIES REGULATIONS

Subpart C—Eastern Pacific Tuna Fisheries

1. The authority citation for part 300, subpart C, continues to read as follows:

Authority: 16 U.S.C. 951 *et seq.*

2. In § 300.24, revise paragraph (u) to read as follows:

§ 300.24 Prohibitions.

* * * * *

(u) Use a United States commercial fishing vessel in the Convention Area to target, retain on board, transship, or land Pacific bluefin tuna in contravention of § 300.25(g)(2) through (4) and (7).

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3. In § 300.25, revise paragraph (g) to read as follows:

§ 300.25 Fisheries management.

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(g) *Pacific bluefin tuna (Thunnus orientalis) commercial catch limits in the eastern Pacific Ocean for 2021.* The following is applicable to the U.S. commercial fishery for Pacific bluefin tuna in the Convention Area in the year 2021.

(1) All commercial fishing vessels of the United States combined may capture, retain, transship, or land no more than 425 metric tons.

(2) A 20-metric ton trip limit will be in effect until any of the following criteria are met:

(i) If NMFS anticipates cumulative catch will reach 250 metric tons during January through March, a 15-metric ton trip limit will be in effect upon the effective date provided in the actual notice, in accordance with paragraph (g)(6) of this section. If NMFS anticipates cumulative catch will reach 325 metric tons during January through March, a 2-metric ton trip limit will be in effect upon the effective date provided in the actual notice, in accordance with paragraph (g)(6) of this section.

(ii) If NMFS anticipates cumulative catch will reach 275 metric tons during April through June, a 15-metric ton trip limit will be in effect upon the effective date provided in the actual notice, in accordance with paragraph (g)(6) of this section. If NMFS anticipates cumulative catch will reach 350 metric tons during April through June, a 2-metric ton trip limit will be in effect upon the effective date provided in the actual notice, in accordance with paragraph (g)(6) of this section.

(iii) If NMFS anticipates cumulative catch will reach 300 metric tons during July through September, a 15-metric ton trip limit will be in effect upon the effective date provided in the actual notice, in accordance with paragraph (g)(6) of this section. If NMFS anticipates cumulative catch will reach 375 metric tons during July through September, a 2-metric ton trip limit will be in effect upon the effective date provided in the actual notice, in accordance with paragraph (g)(6) of this section.

(iv) If NMFS anticipates cumulative catch will reach 325 metric tons during October through December, a 15-metric ton trip limit will be in effect upon the effective date provided in the actual notice, in accordance with paragraph (g)(6) of this section. If NMFS anticipates cumulative catch will reach 375 metric tons during October through December, a 2-metric ton trip limit will be in effect upon the effective date provided in the actual notice, in accordance with paragraph (g)(6) of this section.

(3) After NMFS determines that the catch limit under paragraph (g)(1) of this section is expected to be reached, NMFS will close the fishery effective upon the date provided in the actual notice, in accordance with paragraph (g)(6) of this section. Upon the effective date in the actual notice, targeting, retaining on board, transshipping, or landing Pacific bluefin tuna captured in the Convention Area shall be prohibited as described in paragraph (g)(4) of this section.

(4) Beginning on the date provided in the actual notice of the fishing closure announced under paragraph (g)(3) of this section, a commercial fishing vessel of the United States may not be used to target, retain on board, transship, or land Pacific bluefin tuna captured in the Convention Area through the end of the calendar year. Any Pacific bluefin tuna already on board a fishing vessel on the effective date of the notice may be retained on board, transshipped, and/or landed within 14 days after the effective date published in the fishing closure notice, to the extent authorized by applicable laws and regulations.

(5) If an inseason action taken under paragraph (g)(2), (3), or (4) of this section is based on overestimate of actual catch, NMFS will reverse that action in the timeliest possible manner, provided NMFS finds that reversing that action is consistent with the management objectives for the affected species. The fishery will reopen effective on the date provided in the actual notice in accordance with paragraph (g)(6) of this section.

(6) Inseason actions taken under paragraphs (g)(2), (3), (4), and (5) of this section will be by actual notice from posting on the NMFS website

(<https://www.fisheries.noaa.gov/west-coast/sustainable-fisheries/pacific-bluefin-tuna-commercial-harvest-status>) and a United States Coast Guard Notice to Mariners. The Notice to Mariners will be broadcast three times daily for 4 days. This action will also be published in the **Federal Register** as soon as practicable. Inseason actions will be effective from the time specified in the actual notice of the action (*i.e.*, website posting and United States Coast Guard Notice to Mariners), or at the time the inseason action published in the **Federal Register** is effective, whichever comes first.

(7) If landing Pacific bluefin tuna into the State of California, fish landing receipts must be submitted to the California Department of Fish and Wildlife in accordance with the requirements of applicable State law and regulations, with the exception that the submission must occur within 24 hours of landing.